UNITED STATES DISTRICT COURT		EASTERN DISTRICT OF TEXAS
KENDRICK LEE BOYD,	§ S	
Petitioner,	8 8 8	
versus	\$ 8	CIVIL ACTION NO. 1:20-CV-283
DIRECTOR, TDCJ-ID,	§ 8	
Respondent.	§ §	

## MEMORANDUM ORDER ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Kendrick Lee Boyd, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of the court.

The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge concerning this matter. The magistrate judge recommends dismissing the petition without prejudice as moot.

The court has received the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. No objections were filed to the Report and Recommendation.

## **ORDER**

Accordingly, the findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered dismissing the petition.

In addition, the court is of the opinion petitioner is not entitled to a certificate of appealability. An appeal from a final judgment denying habeas relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253. The standard for a certificate of appealability requires the petitioner to make a substantial showing of the denial of a federal

constitutional right. See Slack v. McDaniel, 529 U.S. 473, 483-84 (2000); Elizalde v. Dretke, 362

F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, the petitioner need not establish

that he would prevail on the merits. Rather, he must demonstrate that the issues are subject to

debate among jurists of reason, that a court could resolve the issues in a different manner, or that

the questions presented are worthy of encouragement to proceed further. See Slack, 529 U.S. at

483-84. An/y doubt regarding whether to grant a certificate of appealability should be resolved

in favor of the petitioner, and the severity of the penalty may be considered in making this

determination. See Miller v. Johnson, 200 F.3d 274, 280-81 (5th Cir. 2000).

In this case, the petitioner has not shown that the issue of whether his petition is moot is

subject to debate among jurists of reason. The factual and legal questions raised by petitioner have

been consistently resolved adversely to his position and the questions presented are not worthy of

encouragement to proceed further. As a result, a certificate of appealability shall not issue in this

matter.

SIGNED at Beaumont, Texas, this 13th day of April, 2021.

MARCIA A. CRONE

Maria a. Crone

UNITED STATES DISTRICT JUDGE

2